

1 DENNIS J. HERRERA, State Bar #139669
 2 City Attorney
 3 JOANNE HOEPER, State Bar #114961
 4 Chief Trial Deputy
 5 SCOTT D. WIENER, State Bar #189266
 6 Deputy City Attorney
 Fox Plaza
 1390 Market Street, 6th Floor
 San Francisco, California 94102-5408
 Telephone: (415) 554-4283
 Facsimile: (415) 554-3837

7
 Attorneys for Defendants
 8 CITY AND COUNTY OF SAN FRANCISCO,
 9 HEATHER FONG, IN HER OFFICIAL CAPACITY,
 OFFICER ALBERTO ESPARZA, AND OFFICER LAMAR
 TONEY

10 CRAIG LAWSON McGRIFFIN,

11 Plaintiff,

12 vs.

13 CITY AND COUNTY OF SAN
 14 FRANCISCO, a municipal corporation;
 15 HEATHER FONG, in her capacity as
 16 Chief of Police for CITY AND COUNTY
 17 OF SAN FRANCISCO; ALBERT
 18 ESPARZA, individually, and in his
 19 capacity as a police officer for CITY AND
 20 COUNTY OF SAN FRANCISCO;
 21 LAMAR TONEY, individually, and in his
 22 capacity as a police officer for CITY AND
 COUNTY OF SAN FRANCISCO, and
 DOES 1-25, inclusive,

23 Defendants.

14 Case No. C07-4589 CW

15 **JOINT CASE MANAGEMENT
 STATEMENT**

16 Date: January 8, 2008

17 Time: 2:00 p.m.

18 Hon. Claudia Wilken

1 The parties submit this Joint Case Management Statement in anticipation of the January 8,
 2 2008, Case Management Conference.

3 1. Jurisdiction and Service

4 The Court has subject matter jurisdiction over this case pursuant to its federal question
 5 jurisdiction and supplemental jurisdiction. All parties have appeared in the case.

6 2. Facts

7 Plaintiffs' Version

8 On 8-25-06, at approximately 9:30 p.m., plaintiff and his friend, Shawn Crawford, had just
 9 stepped outside of Lime (restaurant/bar) in S.F., CA., when defendant police officers ALBERTO
 10 ESPARZA and LAMAR TONEY approached them with their batons in their hands. Defendant
 11 officers demanded that plaintiff, CRAIG McGIFFIN and Mr. Crawford show their hands, and they
 12 complied, raising their hands in the air. Plaintiff said, "We haven't done anything wrong." Defendant
 13 officers then ordered plaintiff and Mr. Crawford to lower their hands, and told Mr. Crawford to step
 14 away. The defendant officer standing in front of plaintiff said, "That sounds like resistance to me", re
 15 plaintiff's statement that he and his friend hadn't done anything wrong.

16 Then, defendants officers assaulted and battered plaintiff, repeatedly bashing plaintiff's head
 17 and face onto the street while pulling his arms behind his back in a manner causing his left shoulder
 18 to separate from the shoulder joint. Defendants then ordered plaintiff to roll onto his left side, and he
 19 could not because of extreme pain his separated left shoulder. Defendants then clubbed plaintiff in
 20 his left kidney area, stomped on his right hand, and then put handcuffs on plaintiff and put him in a
 21 police car. Plaintiff was never read his Miranda rights.

22 Plaintiff begged to be taken to a hospital for treatment of his injuries, and defendants would
 23 not take him, or offer any treatment. In jail, plaintiff went into shock and convulsions from his
 24 injuries, but was not provided medical treatment. He briefly lost consciousness. Plaintiff made an
 25 emergence call from jail. After being jailed eight hours, plaintiff was released and taken immediately
 26 to an emergency room by his friends who had also posted bail for him.

27 Upon release from jail, plaintiff was given documents which wrongfully stated he had been
 28 arrested for assaulting a person he had never met before, in a place he had never been before. The

1 place of arrest listed on the documents was approximately four blocks from where police claimed it to
 2 be. Charges against plaintiff were later dismissed.

3 Defendants' Version

4 On the evening of August 25, 2006, Plaintiff and a friend arrived drunk at Lime, a
 5 restaurant/bar in the Castro district of San Francisco. Plaintiff was asked to leave the bar because of
 6 how drunk he was, and he became belligerent with restaurant staff. When Plaintiff was eventually
 7 escorted from the restaurant, he assaulted the restaurant's security attendant and began to walk away.

8 Two San Francisco police officers, Officer Alberto Esparza and Officer Lamar Toney, were
 9 approaching Lime as Plaintiff and his friend were leaving. Lime's manager flagged down the officers
 10 and informed them that Plaintiff had assaulted an employee, and the officers then attempted to detain
 11 Plaintiff for questioning. Plaintiff was staggering because he was so drunk. Plaintiff was resistant
 12 and abusive toward the officers and refused to be detained. The officers indicated to Plaintiff that he
 13 was under arrest, but Plaintiff refused to cooperate and continued to be belligerent. The officers
 14 then used minimal force to arrest Plaintiff, specifically, they brought him down to the ground in order
 15 to control and cuff him. The officers did not strike Plaintiff. Once on the ground, Plaintiff continued
 16 to resist by refusing to give up his arms for cuffing. The officers were eventually able to cuff him.
 17 Plaintiff continued to be physically resistive even after being cuffed.

18 The restaurant manager signed a citizen's arrest form for Plaintiff. Plaintiff was transported to
 19 county jail. The officers asked Plaintiff if he needed medical assistance, and Plaintiff responded
 20 "fuck you, I'm fine." Plaintiff was seen by a nurse at county jail.

21 Principal factual issues in dispute

22 Whether Plaintiff was intoxicated and if so, to what extent.

23 Whether Plaintiff assaulted the Lime employee.

24 Whether Plaintiff resisted arrest.

25 Whether Plaintiff engaged in the conduct described in Defendants' version.

26 Whether the officers engaged in the conduct described in Plaintiff's version.

27 The level of force that officers used against Plaintiff.

28 Whether Defendants made the statements attributed to them by Plaintiff.

1 Whether Plaintiff requested medical care, whether Plaintiff needed medical care, whether
2 Plaintiff received medical care, and whether Plaintiff was denied medical care.

3 The nature and extent of Plaintiff's injuries.

4 3. Legal Issues

5 Whether the officers had reasonable suspicion and/or probable cause to detain and/or arrest
6 Plaintiff.

7 Whether the officers used reasonable force against Plaintiff.

8 Whether the officers are entitled to qualified immunity.

9 Whether Plaintiff resisted arrest.

10 Whether Plaintiff was unconstitutionally denied medical care.

11 Whether Defendants' caused any of Plaintiff's alleged damages.

12 Whether Plaintiff was at fault for any damages that he sustained.

13 Whether the City is liable to plaintiff under 42 U.S.C. section 1983.

14 4. Motions

15 Plaintiffs intend to move to amend their complaint to add a cause of action for
16 unconstitutional denial of medical care under 42 U.S.C. section 1983.

17 Defendants may move for summary judgment or partial summary judgment.

18 Defendants may move to stay *Monell* discovery and to bifurcate *Monell* issues from the
19 underlying liability issues.

20 Defendants may move to bifurcate punitive damages issues and discovery from other issues in
21 the case.

22 5. Amendment of Pleadings

23 Plaintiffs intend to move to amend their complaint to add a cause of action for
24 unconstitutional denial of medical care under 42 U.S.C. section 1983.

25 6. Evidence Preservation

26 The parties have preserved evidence.

27 7. Disclosures

28 The parties will engage in initial disclosures pursuant to Fed. R. Civ. P. 26.

1 8. Discovery

2 The parties will engage in written and deposition discovery. Defendants may seek one or
3 more medical evaluations of Plaintiff, depending on what injuries he is claiming.

4 9. Class Actions

5 This case is not a class action.

6 10. Related Cases

7 The parties are unaware of related cases.

8 11. Relief

9 Plaintiff is seeking damages, punitive damages, attorneys fees, and costs. Defendants are
10 seeking attorneys fees and costs.

11 12. Settlement/ADR

12 The parties agree to participate in mediation.

13 13. Consent to Magistrate Judge for all Purposes

14 The parties do not consent to trial of this case by a United States Magistrate Judge.

15 14. Other References

16 The case is not suitable for such a reference.

17 15. Narrowing of Issues

18 The parties are not in agreement about any of the legal issues in this case.

19 16. Expedited Schedule

20 This case is not suitable for an expedited schedule.

21 17. Scheduling

22 The Court will need to set dates for the close of discovery, summary judgment (hearing and
23 briefing), and expert disclosures/discovery.

24 18. Trial

25 The parties propose a trial date on January 19, 2009.

1 19. Disclosure of Non-Party Interested Entities or Persons

2 The parties are unaware of nonparties with such an interest in this lawsuit.

3
4 Dated: December 31, 2007

5 DENNIS J. HERRERA
6 City Attorney
7 JOANNE HOEPER
8 Chief Trial Deputy
9 SCOTT D. WIENER
10 Deputy City Attorney

11 -/s/- Scott D. Wiener
12 By: _____
13 SCOTT D. WIENER

14 Attorneys for Defendants

15
16 Dated: December 31, 2007

17 LAW OFFICES OF JOHN BURRIS

18 -/s/- John Burris
19 By: _____
20 JOHN BURRIS

21 Attorneys for Plaintiff